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TCDA Firearm Surrender as a Condition of Release on Bond

Introduction:

When someone is released on bond either, regardless of whether we have agreed or objected to release, the first priority of this office is to ensure that there are conditions in place that will keep the community, and the victim, safe. One of the most effective things we can do, as an office, is ensuring that the defendants who are high risk for re-offending do not have access to a firearm while their case is pending or while they are on community supervision.

Access to a firearm can lead to serious injury or death- especially for someone facing criminal charges who is experiencing a high amount of stress. Defendants charged with family violence are particularly at risk. In 2019, in Texas, 185 Texans were killed by their intimate partners in 2019. Of those deaths, 63% of men and 53% of women used a firearm to commit a homicide.¹

It is not just intimate partner violence that we must be concerned about. According to an analysis by the Crime Intelligence Unit of the Austin Police Department, from 2014-2018 firearms played an increasingly serious role in violent crimes in Austin.²

To prevent gun violence, the most effective strategy is to treat it like a public health issue. That means reducing, or limiting all-together, a defendant's ability to access a firearm. "Gun Violence should be considered a public health issue, not a political one- an epidemic that needs to be addressed with research and evidence-based strategies that can reduce morbidity and mortality."³ The tactics that are most effective to reducing gun violence are reducing access to guns, mental health services to intervene, and violence interrupters who prevent violence before it happens.⁴

² "Honoring Texas Victims: Family Violence Fatalities in 2019: Analysis & Innovative Strategies," Texas Council on Family Violence, <https://tcfv.org/stateplan/index.html>.

² "Gun Crime in Austin, TX: 2014-2018," Austin Police Department, Crime Intelligence Analysis Unit, 3rd Edition, October 2019. https://www.austintexas.gov/sites/default/files/files/Police/Gun_crime_report_2014-2018_3rd_Ed_10292019.pdf

³ "Gun Violence, Prevention of (Position Paper), AAFP Foundation, 2018. <https://www.aafp.org/about/policies/all/gun-violence.html>

⁴ "How Interrupters Face the Epidemic of Violence in Cities Head On," National League of Cities: Cities Stronger Together, August 31, 2020. <https://www.nlc.org/article/2020/08/31/how-interrupters-face-the-epidemic-of-violence-in-cities-head-on/>

In order for TCDA to proactively work to prevent gun violence, our ADAs will be asking for a firearm surrender along with a do not possess order as a condition of bond in a wide variety of cases.

We recognize that there will be exceptions to this condition. One exception may be if a firearm is required for employment. However, Director Approval will be required if an ADA determines that requiring surrender and a do not possess order is not necessary for public safety. There may also be situations where we request a surrender of all firearms except for one issued by the place of employment.

This policy is intended to work in tandem with the Austin/Travis County Family Violence Task Force Firearm Surrender Protocols.

Cases in which there is a presumption of firearm provisions:

In the following cases, ADAs should inquire whether the bond condition includes a firearm provision. If the conditions are not present, or if the bond conditions are being considered, there shall be a presumption that we will request the judge include a firearm provision.

There is a presumption that we will be asking for a firearm provision and that defendant not be permitted to possess firearms in the following situations:

1. All family violence cases, regardless of whether a firearm was used in the instant offense.
2. All cases where a firearm was used in the course of the offense.
3. Any case where the victim has reason to believe that the defendant has a firearm and is concerned that the firearm will be used against the victim or another person.
4. Any case where the defendant has made threats of violence against another person or entity.
5. Any case where competence is at issue or concerns have been raised about that the defendant is suicidal or exhibiting other signs of a mental health disorder or disease that brings into question the safety of firearm possession.
6. Any case, even if not within the above scenarios, where an ADA believes that a firearm surrender is necessary for public safety.

Firearm Provisions:

ADAs should ask the court to order the following three things if the above presumption is met:

1. If the defendant has a license to carry a firearm, we shall ask the court to immediately suspend a license to carry a concealed handgun under Texas Government Code §411.177 during the pendency of the case. If you are unsure whether the defendant has a license, TCDA investigators can do a search for you.
2. We will ask the court to order that after surrendering the firearm the defendant is not permitted to possess a firearm nor live or work in a place where they have access to a firearm.
3. We will ask the court to order a temporary surrender of firearms to a secure location (not through a third party). Instructions for surrender to Precinct 5 are attached to this policy.

4. We will ask the court to admonish the defendant that he or she is not permitted to purchase or be in possession of a firearm for the pendency of the case, and that violation of the order may result in revocation of the bond.
5. ADAs should request surrender to Constable, Precinct 5, rather than a third party transfer. However, if a Judge orders a third-party transfer, ADAs should ask that the third party be brought into court to be admonished on the record.
6. Instructions for surrender to Constable, Precinct 5 are attached to this policy and can be found on our website.

Surrendered firearms and suspected use in the commission of a crime:

Due to the strong public policy reasons for encouraging defendants to surrender their firearms while a case is open, this office will instruct law enforcement to not attempt to access a surrendered firearm without a signed search warrant.

Compliance:

Until the Austin/Travis County Family Violence Task Force Protocols for Firearm Surrender are adopted, ADAs should request that defense counsel notify and provide proof of surrender to the prosecution and the Court of compliance of the above order within 48 hours of release from custody or the issuance of the order.

The email address that receipt of surrender should be sent to is

DAfirearmsurrender@traviscountytexas.gov.

- When firearms surrender provisions are added to conditions of bond or probation, ADAs should add the firearms surrender tag to the case in TechShare.
- ADAs shall monitor compliance, and immediately request a hearing before the judge if the conditions are not complied with.

Violations of Court Order:

ADAs should immediately raise with the court any information that comes into their possession that the defendant has acquired a firearm, whether it is from a victim, a new case, or any other means. ADAs should consider requesting a revocation of the bond if the defendant has been found to have violated the order.

Return of Firearms:

Upon a request from the defendant for return of firearms, the DA's office will run a criminal history check to ensure that there are no new or additional offenses or protective orders that would prohibit the defendant from owning or possessing firearms. No firearms should be returned to the defendant without a court order.

Instruction Sheet for Voluntary Gun Surrender:

Pursuant to a court order, you have been instructed to surrender firearms(s) to the Travis County Constable, Precinct 5

FOLLOW THESE INSTRUCTIONS

1. Respondent/Defense Attorney/Respondent Representative, shall notify Travis County Constable Precinct 5 a minimum of 24-hours prior to intent to surrender weapon.
2. Call during business hours, Monday through Friday between 8:00 a.m. and 5:00 p.m. at (512) 854-9100.
 - a. Ask to speak to a supervisor to schedule a Voluntary Gun Surrender Court Order.
3. **All firearms(s) must be unloaded.**
4. Place the firearm(s) in your vehicle trunk. If you do not have a trunk, lock your firearm(s) in a container in the back of your vehicle out of arms reach. **DO NOT** put it in the glove compartment or arm rest compartment.
5. At time of scheduling, a specific time for surrender would be agreed upon.
6. Drive to the Travis County Precinct 5 Constable Office at 1003 Guadalupe, Austin, Texas 78701, at the prescribed time, and bring the Firearm Surrender Court Order. DO NOT stop anywhere else.
7. Respondent will park at rear of CN5 building (between Guadalupe St. and Lavaca St.).
8. Call the agency when you arrive.
9. Respondent leaves weapon(s) in locked vehicle, unloaded and safe.
10. **DO NOT REMOVE FIREARM(S) FROM VEHICLE.**
11. Respondent brings Firearm Surrender Court Order to front lobby at CN5 at agreed scheduled time.
12. CN5 Officer(s) would accompany Respondent to vehicle.
 - a. Respondent unlocks vehicle, and voluntarily allows CN5 officer access to retrieve weapon(s)
13. Officer ensures the weapon(s) are safe, and then removes the weapon(s) from the vehicle.
14. **AT NO TIME SHOULD RESPONDENT HANDLE THE WEAPON.**
15. Officer brings weapon(s) inside CN5 to photograph, record make, model, caliber, magazine if any, and serial number(s).
16. Officer provides the respondent a receipt of all weapon(s) surrendered in compliance with the Firearm Surrender Order, and asks respondent to confirm(s) surrendered by signature on the receipt.
17. Email DAFirearmsurrender@traviscountytexas.gov upon completion of each firearm surrender

FAILURE TO COMPLY WITH THE COURT'S ORDER

COULD RESULT IN A MOTION TO REVOKE YOUR BOND

OR A MOTION TO REVOKE YOUR PROBATION